

**EXHIBIT D**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 05-cv-645-MSK-BNB

JOSÉ C. ALFARO and  
MARTHA ALFARO

Plaintiff,

v.

GENERAL MOTORS CORPORATION,  
HONEYWELL, INC., f/k/a ALLIEDSIGNAL, INC.,  
DELCO ELECTRONICS CORPORATION,  
DELPHI AUTO SYSTEMS, f/k/a INLAND FISHER GUIDE  
JOHN DOE, and JOHN DOE, INC.

Defendants.

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**GENERAL MOTORS CORPORATION'S MOTION TO ADJUDICATE SUMMARY  
JUDGMENT MOTION, WITH REQUEST FOR EXPEDITED CONSIDERATION**

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Defendant General Motors Corporation ("GM") hereby respectfully requests that this Court enter an Order adjudicating GM's motion for summary judgment in light of Plaintiffs' failure to file a response to its motion for summary judgment. Further, in order to avoid unnecessary expenditure of time and resources, GM respectfully requests that the Court expedite its consideration of the present motion. In support thereof, GM states as follows:

1. On July 21, 2006, GM filed a motion for summary judgment and brief in support of that motion. *See* Defendant General Motors Corporation's Motion for Summary Judgment,

DKT. No. 59 (July 21, 2006); Defendant General Motors Corporation's Opening Brief in Support of Its Motion for Summary Judgment, DKT No. 60 (July 21, 2006).

2. Pursuant to D.C.COLO.LCivR 56.1(A), Plaintiffs response to GM's motion for summary judgment was due no later than August 10, 2006. D.C.COLO.LCivR 56.1(A) ("A response brief *shall* be filed within *20 days* after the date of filing of the motion and opening brief, or such other time as the court may order.") (emphasis added). Plaintiffs have not filed a response to GM's July 21, 2006 motion for summary judgment. Additionally, Plaintiffs have not made or sought an extension of time to respond to GM's motion for summary judgment.

3. Defendant Honeywell International, Inc., also filed a motion for summary judgment on July 18, 2006. *See* Defendant, Honeywell International, Inc.'s Motion for Summary Judgment, DKT. No. 58 (July 18, 2006). Plaintiffs have likewise not filed a response to Honeywell's motion for summary judgment, and have not sought an extension of time to respond to the motion.

4. Pursuant to D.C.COLO.LCivR 7.1(A), counsel for GM conferred with Plaintiffs counsel regarding (1) their failure to file a response brief to GM's motion for summary judgment, and (2) this motion. Plaintiffs' counsel opposes this motion.

5. "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. *If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.*" Fed. R. Civ. P. 56(e) (emphasis added). Summary judgment shall be rendered "if the

pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c).

6. Summary judgment is proper where the party opposing a motion for summary judgment fails to respond to that motion and the district court has examined the moving party’s submission and determined that “it has met its initial burden of demonstrating that no material issues of fact remain for trial and the moving party is entitled to judgment as a matter of law.” *Reed v. Nellcor Puritan Bennett*, 312 F.3d 1190, 1195 (10th Cir. 2002).

7. For the reasons set forth in GM’s motion for summary judgment and brief in support thereof, GM is entitled to summary judgment. *See id.*

8. To avoid unnecessary expenditure of time and resources, GM respectfully requests that the court expedite consideration of this motion. Depositions of expert witnesses for Plaintiffs have been scheduled for August 22, 2006 (Denver, Colorado), August 25, 2006 (Santa Barbara, California), August 29, 2006 (Carlsbad, California), and August 30, 2006 (Denver, Colorado). Until the Court grants its motion for summary judgment, in order to diligently defend itself, GM will have to conduct these depositions. In taking these depositions, GM will incur time, travel, and expenses. Accordingly, GM respectfully requests that the Court expedite consideration of this motion in order to conserve the parties’ resources.

WHEREFORE, GM respectfully requests that the Court (1) expedite its determination of this motion and (2) grant it summary judgment for the reasons set forth in its motion for summary judgment and brief in support thereof, and in light of Plaintiffs’ failure to respond to its motion for summary judgment.

Respectfully submitted,

s/Charles L. Casteel

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 21st day of August, 2006, I electronically filed the foregoing **GENERAL MOTORS CORPORATION'S MOTION TO ADJUDICATE SUMMARY JUDGMENT MOTION, WITH REQUEST FOR EXPEDITED CONSIDERATION** with the Clerk of Court using CM/ECF for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic filing to the following ECF registrants:

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and I certify that I have mailed the documents to the following non CM/ECF participants:

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